

2005 Policy Analysis Report on Migration and Asylum

Kohlmeier, Manfred; Heine, Jana; Mananashvili, Sergo; Hecht, Heiko

Veröffentlichungsversion / Published Version
Forschungsbericht / research report

Empfohlene Zitierung / Suggested Citation:

Kohlmeier, M., Heine, J., Mananashvili, S., & Hecht, H. (2006). *2005 Policy Analysis Report on Migration and Asylum*. (Annual Policy Report / Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ)). Nürnberg: Bundesamt für Migration und Flüchtlinge (BAMF) Forschungszentrum Migration, Integration und Asyl (FZ); Bundesamt für Migration und Flüchtlinge (BAMF) Nationale Kontaktstelle für das Europäische Migrationsnetzwerk (EMN). <https://nbn-resolving.org/urn:nbn:de:0168-ssoar-67468-6>

Nutzungsbedingungen:

Dieser Text wird unter einer Deposit-Lizenz (Keine Weiterverbreitung - keine Bearbeitung) zur Verfügung gestellt. Gewährt wird ein nicht exklusives, nicht übertragbares, persönliches und beschränktes Recht auf Nutzung dieses Dokuments. Dieses Dokument ist ausschließlich für den persönlichen, nicht-kommerziellen Gebrauch bestimmt. Auf sämtlichen Kopien dieses Dokuments müssen alle Urheberrechtshinweise und sonstigen Hinweise auf gesetzlichen Schutz beibehalten werden. Sie dürfen dieses Dokument nicht in irgendeiner Weise abändern, noch dürfen Sie dieses Dokument für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, aufführen, vertreiben oder anderweitig nutzen.

Mit der Verwendung dieses Dokuments erkennen Sie die Nutzungsbedingungen an.

Terms of use:

This document is made available under Deposit Licence (No Redistribution - no modifications). We grant a non-exclusive, non-transferable, individual and limited right to using this document. This document is solely intended for your personal, non-commercial use. All of the copies of this documents must retain all copyright information and other information regarding legal protection. You are not allowed to alter this document in any way, to copy it for public or commercial purposes, to exhibit the document in public, to perform, distribute or otherwise use the document in public.

By using this particular document, you accept the above-stated conditions of use.

**German National Contact Point
of the European Migration Network**

2005 Policy Analysis Report on Migration and Asylum

**Manfred Kohlmeier, Jana Heine
Sergo Mananashvili, Heiko Hecht**

Contents

| | |
|---|----|
| 1. Introduction | 3 |
| 2. Immigration Overview: General Trends in migration and asylum | 4 |
| 2.1 Main groups of migrants, refugees and asylum seekers | 6 |
| 2.2 General trends of emigration and immigration | 8 |
| 2.3 Recent changes | 9 |
| 3. Political developments in the field of migration and asylum | 10 |
| 3.1 General structure of the political system and institutional context relevant for migration and asylum | 10 |
| 3.2 General political developments | 12 |
| 3.3 Central political debates related migration, integration and asylum issues | 14 |
| 3.4 Institutional developments | 18 |
| 4. Legislative Developments in the Area of Migration and Asylum | 19 |
| 4.1 Brief description of the general structure of the legal system in the area of migration and asylum | 19 |
| 4.2 Legislative Developments | 20 |
| 4.2.1 Components of the Immigration Act | 21 |
| 4.2.2 Reduction of the number of residence titles | 21 |
| 4.2.3 Labour migration | 22 |
| 4.2.4 Humanitarian immigration | 22 |
| 4.2.5 Asylum procedure | 23 |
| 4.2.6 Promotion of integration | 23 |
| 4.2.7 Citizenship and Naturalization | 25 |
| 4.3. Implementation of EU Legislation | 26 |
| 5. Policy Implementation Issues | 31 |
| 5.1. Labour Market and Employment | 31 |
| 5.2 Education | 33 |
| 6. Literature | 38 |

The report was completed in February 2006.

1. Introduction

The present report was drawn up by the *Bundesamt für Migration und Flüchtlinge*¹ in its capacity as Germany's National Contact Point of the European Migration Network. This 2nd Policy Analysis Report compiled for the European Migration Network focuses on the key legislative and political developments relating to immigration and asylum in Member States of the European Union during the period from 1 July 2004 to 31 December 2005, with particular attention devoted to the events of 2005. The Report records the progress achieved in implementing Community law and describes essential changes in administrative practice. National policy reports are primarily intended to inform the European Commission of current developments in EU Member States. In accordance with the transparency principle adopted by the European Migration Network they are, however, also available to the general public². An overall report will summarise major developments in the Member States from a comparative perspective.

The most significant development on migration and asylum in Germany during the reporting period was the entry into force of the Immigration Act (*Zuwanderungsgesetz*) on 1 January 2005. This fundamentally restructured German legislation relating to foreign nationals. The Aliens Act (*Ausländergesetz*) of 1990 was replaced by a new statute governing the residence, employment and integration of foreign nationals³ (Residence Act - *Aufenthaltsgesetz*) on Federal German territory. This concluded an extremely protracted legislative procedure that sparked controversial debate both in the public arena and in the two parliamentary chambers, the *Bundestag* and *Bundesrat*. Ultimately, however, the Bill was harmoniously resolved and backed not only by a broad parliamentary majority but by all relevant political forces. The new Immigration Act provides, for the first time, a legal framework for the integrated management and effective limitation of immigration. The other novel aspect of this legislation is that it enshrines measures to integrate legal immigrants residing long-term in Germany.

¹ The *Bundesamt für Migration und Flüchtlinge* (BAMF), or Federal Office for Migration and Refugees, was grafted from the former *Bundesamt für die Anerkennung ausländischer Flüchtlinge* (BAFI), or Federal Office for the Recognition of Foreign Refugees, when the new Immigration Act entered into force on 1 January 2005.

² At www.european-migration-network.org and www.emn-germany.de.

³ Of 30 July 2004 (BGBl. I p. 1950).

2. Immigration Overview: General Trends in migration and asylum

If we consider the overall migration of German and non-German citizens into and out of the country during the years 2000 to 2004, official statistics produce the following scenario:

The inflow of Germans and non-Germans to Germany in the year 2000 was 841,158, but in 2004 that figure had dropped to 780,175. Outflow is also substantial, however, and has been fluctuating for some years between 597,000 and 815,000 per annum. These high levels are partly due to the considerable magnitude of temporary migration flows.

Net migration (inflow minus outflow) over the last five years (2000-2004) reveals an annual net inflow of approximately 177,000 persons. The average for the years 1995-1999 had been 205,000. Non-Germans account for the great majority of both arrivals and departures: in recent years four-fifths of all migrants into the country did not hold a German passport.

Migration inflows and outflows across German borders from 2000 until 30 June 2005

| Year | Inflow | | | Outflow | | | Net migration (Inflow minus outflow) | |
|------------------------------|---------|--------------------------|------|---------|--------------------------|------|---|--------------------------|
| | Total | of whom foreign citizens | % | Total | of whom foreign citizens | % | Total | of whom foreign citizens |
| 2000 | 841,158 | 649,249 | 77.2 | 674,038 | 562,794 | 83.5 | +167,120 | +86,455 |
| 2001 | 879,217 | 685,259 | 77.9 | 606,494 | 496,987 | 81.9 | +272,723 | +188,272 |
| 2002 | 842,543 | 658,341 | 78.1 | 623,255 | 505,572 | 81.1 | +219,288 | +152,769 |
| 2003 | 768,975 | 601,759 | 78.3 | 626,330 | 499,063 | 79.7 | +142,645 | +102,696 |
| 2004 | 780,175 | 602,182 | 77.2 | 697,632 | 546,965 | 78.4 | +82,543 | +55,217 |
| 2005 until 30 June | 347,038 | 283,136 | 81.6 | 280,529 | 215,103 | 76.7 | +66,509 | +68,033 |
| 5-year average 2000 -2004 | 822,414 | 639,358 | 77.7 | 645,550 | 522,276 | 80.9 | +176,864 | +117,082 |

Source: Statistisches Bundesamt, calculations by BAMF

When we consider the different age groups, we see that over three-quarters (75.4%) of the inflow in 2004 were under 40 years old, compared with 46.8% of the overall population.

Gender analysis of the inflow and outflow statistics reveals that the ratio has remained fairly constant over recent years. Women accounted for between 42.0% (2000) and 41.6% (2004) of the inflow. This means that women are under-represented among arrivals. There is a similar pattern with outflow. Fewer women are leaving the country than men, and this value has remained stable over the years at between 36.7% (2000) and 37.5% (2004).

The largest group of arrivals in 2004 were German citizens: 177,993 in absolute figures or 23% of the inflow. This group consists partly of ethnic German resettlers (*Spätaussiedler*) from the former Soviet Republics and Eastern Europe and partly of a substantial number of Germans returning home after a period elsewhere. There was a large year-on-year increase in the arrival of Polish citizens (from 88,241 in 2003 to 125,042 in 2004). As a result 16% of the total inflow originated in Poland, while 5% held Turkish citizenship and 4% came from the Russian Federation. These were followed by Romanians, Italians and citizens of Serbia and Montenegro, each accounting for 3% of all immigration.

**National breakdown of migration inflows and outflows across German borders:
a comparison of 2004 and 2003**

| Citizenship of migrants | Inflow | | Outflow | | Net migration (balance of inflow and outflow) | |
|----------------------------|---------|---------|---------|---------|---|---------|
| | 2003 | 2004 | 2003 | 2004 | 2003 | 2004 |
| Germany | 167,216 | 177,993 | 127,267 | 150,667 | +39,949 | +27,326 |
| Poland | 88,241 | 125,042 | 73,666 | 96,345 | +14,575 | +28,697 |
| Turkey | 49,774 | 42,644 | 36,863 | 38,005 | +12,911 | +4,639 |
| Russian Federation | 31,776 | 28,464 | 13,879 | 14,078 | +17,897 | +14,386 |
| Romania | 23,780 | 23,545 | 19,759 | 20,275 | +4,021 | +3,270 |
| Serbia and Montenegro | 22,751 | 21,691 | 30,728 | 28,345 | -7,977 | -6,654 |
| Italy | 21,634 | 19,550 | 32,485 | 35,056 | -10,851 | -15,506 |
| Hungary | 14,252 | 17,411 | 14,972 | 16,490 | -720 | +921 |
| USA | 14,666 | 15,292 | 14,064 | 14,926 | +602 | +366 |
| Ukraine | 17,696 | 15,000 | 6,626 | 6,357 | +11,070 | +8,643 |
| China | 16,059 | 13,067 | 11,704 | 12,793 | +4,355 | +274 |
| France | 12,324 | 12,488 | 12,045 | 13,646 | +279 | -1,158 |
| Slovakia | 10,599 | 11,633 | 9,669 | 10,284 | +930 | +1,349 |
| Bulgaria | 13,369 | 11,586 | 10,280 | 10,299 | +3,089 | +1,287 |
| Croatia | 11,620 | 10,513 | 12,120 | 12,379 | -500 | -1,866 |

Positive net migration in 2004 was especially large for Poland (+34,745) and the Russian Federation (+43,360). Whereas the flows involving Poland tend to be characterised for the most part by temporary labour migration, arrivals from the Russian Federation are more likely to seek a long-term stay. Many migrants from the Russian Federation are ethnic German resettlers or Jewish immigrants with their families, and both of these groups tend to strike permanent roots in Germany. By contrast, negative net migration in 2004 was particularly pronounced for Italy (-14,851). Outflow also exceeded inflow, as it has done since 2001, for Serbia and Montenegro (-5,317). This is due to the continuing return of refugees from Kosovo.

2.1 Main groups of migrants, refugees and asylum seekers

28,914 people applied for asylum in Germany in 2005. This represents a further substantial drop in the number of asylum seekers. Compared with 2004 (35,607 applications) the figures for 2005 were down by 6,693 or 18.8%⁴.

Month-on-month the pattern for these two years was as follows:

| Month | 2004 | 2005 |
|-----------|-------|-------|
| January | 3,767 | 2,338 |
| February | 2,989 | 2,101 |
| March | 3,411 | 2,223 |
| April | 3,015 | 2,266 |
| May | 2,609 | 2,107 |
| June | 2,895 | 2,287 |
| July | 2,907 | 2,150 |
| August | 2,943 | 2,423 |
| September | 2,768 | 2,507 |
| October | 2,898 | 2,247 |
| November | 2,665 | 2,464 |
| December | 2,746 | 2,097 |

⁴ http://www.bamf.de/nr_566136/DE/DasBAMF/PresseVeranstaltungen/Presse/Dokumente/2006/060109-pressemitteilung-bmi.html.

The main countries of origin of asylum seekers in 2005 were:

| Change | | | | | |
|--------|-----------------------|-------|--------------|-------|----------|
| | Country | 2004 | 2005 | % | absolute |
| 1. | Serbia and Montenegro | 3,855 | 5,522 | 43.2 | 1,667 |
| 2. | Turkey | 4,148 | 2,958 | -28.7 | -1,190 |
| 3. | Iraq | 1,293 | 1,983 | 53.4 | 690 |
| 4. | Russian Federation | 2,757 | 1,719 | -37.6 | -1,038 |
| 5. | Vietnam | 1,668 | 1,222 | -26.7 | -446 |
| 6. | Syria | 768 | 933 | 21.5 | 165 |
| 7. | Iran | 1,369 | 929 | -32.1 | -440 |
| 8. | Azerbaijan | 1,363 | 848 | -37.8 | -515 |
| 9. | Afghanistan | 918 | 711 | -22.5 | -207 |
| 10. | China | 1,186 | 633 | -46.6 | -553 |

During the overall period from January to December 2005 the *Bundesamt für Migration und Flüchtlinge* issued 48,102 decisions (2004: 61,961). 411 persons (0.9 per cent) were recognised as entitled to asylum under Art. 16a of Germany's Constitution (Basic Law). 2,053 persons (4.3 per cent) were granted refugee protection under sec. 60 (1) of the Residence Act⁵. The table shows a breakdown by country of origin:

| Country of origin | Entitled to asylum under Art. 16a Basic Law | Refugee protection under sec. 60 (1) Residence Act |
|-----------------------|---|--|
| Serbia and Montenegro | 0.1 % | 0.1 % |
| Turkey | 2.0 % | 9.1 % |
| Iraq | 0.6 % | 2.3 % |
| Russian Federation | 0.8 % | 11.3 % |
| Vietnam | 0.0 % | 0.8 % |
| Syria | 1.6 % | 13.5 % |
| Iran | 3.6 % | 12.4 % |
| Azerbaijan | 0.2 % | 5.5 % |
| Afghanistan | 1.4 % | 4.4 % |
| China | 0.6 % | 3.8 % |

28,109 asylum applications (58.4 per cent) were turned down. 17,529 applications (36.4 per cent) were resolved elsewhere.

⁵ This equates with refugee status under the Geneva Convention.

In 657 cases considered between January and December 2005, the *Bundesamt für Migration und Flüchtlinge* established grounds for non-removal in accordance with sec. 60 paras. 2, 3, 5 and 7 of the Residence Act, e.g. due to a threat of torture or the death penalty or another specific major risk.

The number of as yet undecided asylum applications at the end of December 2005 was 9,114 (6,852 first applications and 2,262 repeat applications). At the end of 2004 the total had been 14,690, of which 11,200 were first applications and 3,490 were repeat applications.

2.2 General trends of emigration and immigration

Migration can be broken down into the following types:

- internal EU migration,
- ethnic German resettlers,
- Jewish immigrants,
- spouses and reunited families, and
- labour migration.

Internal EU migration: In the year 2003 98,709 non-German EU citizens migrated to Germany, 114,042 emigrated into other Member States. From the enlarged European Union in the year 2004 266,355 non-German EU citizens took residence in Germany, whereas the number of the outflow amounts to 265,538.

Ethnic German resettlers: These resettlers qualify as ethnic Germans under Germany's Basic Law (Art. 116). In 2004 59,093 such persons, many coming from the territory of the former Soviet Union, resettled in Germany.

Jewish immigrants: Since 1991 there has been a statutory procedure enabling Jewish immigrants from the territory of the former Soviet Union to resettle permanently in Germany. 11,208 Jewish immigrants arrived in 2004 and 8,472 in 2005.

Spouses and reunited families: A distinction must be made between the spouses and family members of EU citizens (internal migration) and those of third-country nationals. In 2002 85,305 family members were reunited with third-country nationals in Germany, in 2004 this figure had fallen to 65,935.

Labour migration: Due to specific demand in certain areas of the labour market, various forms of labour migration have evolved in Germany. The three major manifestations of this in 2004 were seasonal labourers (333,690), project-tied workers (34,211) and holders of the Green Card (2,273)

enabling highly qualified foreign IT specialists to obtain a work and residence permit for a maximum of 5 years.

2.3 Recent changes

In mid-November 2005 Germany's federal and state interior ministers agreed on a new procedure for admitting Jewish immigrants from the territory of the former Soviet Union⁶, following discussions in summer 2005 with the Central Council of Jews. It requires immigrants and their families to demonstrate a basic command of German and to provide for their own income. A local Jewish community must also be prepared to accept them as members. The Federal Ministry of the Interior intends to set up an advisory board composed of representatives of the German Foreign Office, the *Bundesamt für Migration und Flüchtlinge*, the Federal States and the Central Council of Jews in Germany to prepare for this admission procedure and discuss cases of hardship⁷.

Some 127,150 non-German citizens were naturalised in Germany during 2004. According to statistics from the Federal Statistical Office (*Statistisches Bundesamt*) this was about 13,600 (–9.6%) fewer than in the previous year. The introduction of new legislation on citizenship in 2000 had seen naturalisations peak at almost 186,700. This figure fell gradually in subsequent years. The decline in 2004 was noticeably smaller than in 2002 (–13.2%), but slightly bigger than in 2003 (–8.9%).

Of all those who took German citizenship in 2004, about 82,950 (65%) did so on the grounds of at least eight years' legal residence in Germany combined with a valid residence permit or entitlement. This was approx. 3,330 (–3.9%) fewer than in 2003. The foreign spouses and minor children of these persons are entitled to a German passport after a reduced period of time, if they are living in Germany. The number of these naturalisations declined substantially compared with the previous year by about 25,100 to almost 19,900 (–21%).

Turkey supplied the largest group of naturalisations in 2004, as in previous years, this time with about 44,470 persons. They accounted for 35% of all naturalisations, which is considerably more than the percentage of Turkish citizens among all foreign nationals living in Germany (26%). They were followed in second and third place by naturalisations of Polish (nearly 7,500) and Iranian (about 6,360) citizens. Compared with 2003 there was a big increase in the naturalisation of persons from Poland (+150.8%) and the Russian Federation (+58.5%), followed by Iraq (+18.8%). The greatest decrease occurred in the naturalisation of persons from Serbia and Montenegro (–30.7%) and Iran (–32.6%).

⁶ Permanent Conference of Interior Ministers and Senators of the Federal States, decision by written procedure dated 18 November 2005.

⁷ Newsletter *Migration und Bevölkerung*, issue no. 10, December 2005.

3. Political developments in the field of migration and asylum

3.1 General structure of the political system and institutional context relevant for migration and asylum

Issues relating to the migration and integration policy of the Federal Government fall within the remit of the Federal Ministry of the Interior⁸. These include legislation governing the residence and mobility of third-country and other EU nationals, asylum law, the integration of migrants who remain in Germany for the long term, returns and European harmonisation within these areas. Other matters addressed by the Ministry concern the affairs and admission of displaced persons and resettlers, ethnic and linguistic minorities in Germany, assistance for German minorities in the countries of Central and South-Eastern Europe, the CIS and the Baltic, and legislation on citizenship. Hence the Ministry of the Interior was responsible in key respects for devising a legal framework for a contemporary, coherent and comprehensive strategy for immigration to Germany. In addition to this, the Ministry supervises the administrative and technical operations of the *Bundesamt für Migration und Flüchtlinge*, Germany's migration and refugee service.

As a supreme federal agency, accountable to the Federal Ministry of the Interior, the *Bundesamt für Migration und Flüchtlinge*⁹ is responsible for implementing the asylum procedure, for the protection of refugees, for international activities, for pursuing integration and for promoting voluntary returns. To exercise these functions as effectively as possible the agency operates an Asylum and Migration Information Centre. This is where essential data is compiled from all sources on countries of origin and transit and on international developments relating to refugees and migration along with their root causes. This is made available to staff so that they can perform their duties efficiently. With the entry into force of the Immigration Act, the *Bundesamt* was entrusted with a number of new and important tasks. These include devising and implementing integration courses (language and orientation courses) for immigrants, reviewing initial migration counselling and promoting projects for the social integration of resettlers and foreign nationals residing long-term in Germany. The *Bundesamt* also draws up a nationwide integration programme and provides technical expertise for the German government in the delivery of integration policies. Other tasks which fall to this service relate to the supply of broad information and the creation of appropriate information aids, not only for migrants, but also for the local Foreigners' Offices (*Ausländerbehörde*), the providers of integration courses and other participants in the integration process. In addition to this,

⁸ <http://www.bmi.bund.de>

⁹ <http://www.bamf.de>

the *Bundesamt* maintains the Central Register of Foreign Nationals (*Ausländerzentralregister*) and undertakes academic research in the field of migration in order to derive analytical insights into migration management.

In December 1978 a new office, that of Federal Government Commissioner to Promote the Integration of Alien Workers and their Families, was attached to the Federal Ministry of Employment and Social Affairs. The Commissioner's task was to observe the situation of foreign nationals in the country and draw up proposals for tackling any problems. The Immigration Act redefined this office as Federal Government Commissioner for Migration, Refugees and Integration, placing it within the purview of the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth. The Commissioner for Migration, Refugees and Integration is appointed by the federal government, and his or her task is to act as the government's independent advisor (sec. 92 – 94 Residence Act, *AufenthG*)¹⁰. On 30 November 2005 the new German government appointed the deputy leader of the parliamentary CDU/CSU, Prof. Maria Böhmer (CDU), as Minister of State for Integration within the Federal Chancellery, where she is responsible for integration and policy towards foreign nationals. She has assumed the tasks of the Federal Government Commissioner for Migration, Refugees and Integration. Dr Böhmer replaces Marieluise Beck of the Green Party, whose office was formerly attached to the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth.

The Commissioner's job includes promoting the integration of foreign nationals residing long-term in Germany, supporting the government in keeping its integration policy up to date, developing the framework for foreign and German nationals and different ethnic groups to live together with as little tension as possible, encouraging mutual understanding and combating xenophobia and unfair discrimination. It is likewise her task to monitor immigration to Germany and the European Union and migration trends into other countries. She must be consulted by the government when it draws up new legislation.

Given the large number of resettlers in 1988, the government decided on 28 September of that year to appoint a Federal Government Commissioner for Resettler Issues. This Commissioner is responsible for coordinating all measures relating to resettlers across government departments, provides information in response to questions about resettlers, liaises with German minorities in the territories of origin and acts as a contact for problems confronted by resettlers. The Commissioner's central task, however, is integration, the objective being to ensure that resettlers can participate quickly and sustainably in social, vocational and cultural structures in Germany. Following a decision on 20 November 2002, the Commissioner's duties were extended to include minorities within this country: the Danes, Frisians, Sorbs and German Sinti and Roma. Since 1 February

¹⁰ <http://www.integrationsbeauftragte.de/>

2006 the new Federal Government Commissioner for Resettler Issues and National Minorities has been Dr Christoph Bergner, Parliamentary State Secretary at the Ministry of the Interior¹¹.

3.2 General political developments

German political developments in the field of home affairs during the reporting period were dominated by the decision to call national elections and the formation of a new government coalition headed by Angela Merkel. Led by ex-Chancellor Gerhard Schröder the government had initiated the reform programme „Agenda 2010“ to initiate profound changes in the health services, old age pension policy and on the labour market. Internal strife arose in the government parties about the need for reforms and the right options to choose. The previous coalition consisting of the SPD and Bündnis 90/Die Grünen had hoped that the economy would revive, relieving pressures in the labour market, but this did not occur¹². February 2005 saw 5.22 million people (12.6%) unemployed, the highest jobless figures in Germany's post-war history, even making allowance for the impact of new statistical methods¹³. Given this situation the political tide did not change as much as the governing parties had hoped in the run-up to election year 2006. In fact, the labour market reforms which formed the core of ex-Chancellor Gerhard Schröder's Agenda 2010 were becoming increasingly unpopular. The last chunk of Agenda 2010, the 4th Modern Labour Market Services Act („Hartz IV“), was finally approved by the upper chamber, the *Bundesrat*, on 9 July 2004 following protracted controversy, finally entering into force on 1 January 2005 six months later than planned¹⁴. Pursuing a policy of „incentives and demands“ it above all sought to re-integrate the long-term unemployed into the labour market. This entailed combining unemployment and social benefit into one payment known as Unemployment Benefit II (*Arbeitslosengeld* or *ALG II*). The standard amount is 345 € in the former Western states of Germany and 331 € in the former East, combined with a rebate for an appropriate rent and for heating. The recipients are expected to accept any job that is not morally reprehensible. If they do not, their benefit is cut. Putting this into practice was hampered by a series of problems. Social benefit had been paid by the local authority and unemployment benefit by the Federal Employment Agency (*Bundesagentur für Arbeit*), but local authorities made far greater use than expected of the chance to reallocate recipients of their money to ALG II, which was funded by the Employment Agency¹⁵. Statistical assumptions about the social composition of the recipient population proved wrong. Instead of one application in four being rejected because the applicant had personal wealth to draw on first, this could only be done in one case out of seven. Besides, because the labour market did not display the predicted recovery the

¹¹ http://www.bmi.bund.de/cln_028/nn_122688/Internet/Content/Themen/Aussiedlerbeauftragter/Pressemitteilungen_nur_BA_Seite/BA_Bergner.html

¹² Harenberg Aktuell 2006, Das Jahrbuch, Daten – Fakten – Hintergründe.

¹³ Bundesagentur für Arbeit, The German Labour Market, monthly report for February 2005.

¹⁴ <http://www.bmwi.de/Navigation/Service/Gesetze/rechtsgrundlagen-arbeitsrecht,did=23442.html>

¹⁵ http://www.stern.de/sonst/550718.html?eid=550691&&nv=ex_rt

number of people receiving Unemployment Benefit II in spring 2005 was 800,000 more than the government had forecast in June 2004. Considerable social hardship combined with imbalances in the reforms, which primarily affected people with poor prospects in the labour market, triggered widespread discontent.

The results of regional elections in *Schleswig-Holstein* in February 2005 and North Rhine-Westphalia in May 2005 meant severe losses for the SPD and brought the SPD-led *Laender* governments down. In view of this ex-Chancellor Schröder sought to bring the national elections forward, seeking fresh backing for his policies from the electorate¹⁶. As Germany's Constitution does not provide for the *Bundestag* to dissolve itself Chancellor Schröder put a motion of confidence to parliament on 27 June 2005, aware that he would not obtain the absolute majority it required. Defending his motion on 1 July 2005 Schröder argued that lack of support among his own party was denying him the constant assurance he needed that he would obtain a parliamentary majority for his policies. After the regional election defeats for the SPD and in view of a blockade by opposition parties in the *Bundesrat*, which they controlled, his government's scope for action had been curtailed. The continuation of the reform process had to be put to the country¹⁷. By taking this step Schröder unleashed a constitutional debate about the legitimacy of his motion of confidence in the *Bundestag*. This also provoked a shake-up of the political party landscape. The consequences hit the SPD hardest of all when the *Linkspartei*, a loose-knit left-wing party based around the PDS, rapidly grew into a strong force within the political spectrum. With early elections called for 18 September 2005, CDU Chairwoman Angela Merkel was selected by the combined CDU/CSU as their candidate for the Chancellorship.

At these federal elections on 18 September 2005 the governing coalition of SPD and Alliance 90/The Greens lost their majority, but without the CDU/CSU and FDP achieving a majority of their own. The strong performance of the Left Party-PDS, with whom neither the SPD nor the CDU/CSU would contemplate a coalition, as they openly declared, made the task of establishing a majority complicated, with all parties concerned called upon to yield more concessions than usual. Finally the only feasible option for establishing a government proved to be a "grand coalition" between the CDU/CSU and SPD under Angela Merkel's leadership. After two months of negotiating, an agreement on the formation of a government coalition was signed on 18 November 2005. On 22 November 2005 the new government took office with Dr Angela Merkel as Federal Chancellor. The Ministry of the Interior is now headed by Dr Wolfgang Schäuble (CDU).

¹⁶ Weekly news magazine *Der Spiegel*, issue no. 22 of 30 May 2005.

¹⁷ Bulletin der Bundesregierung Nr. 61-1 vom 1. Juli 2005, Rede von Bundeskanzler Gerhard Schröder zum Antrag gemäß Artikel 68 des Grundgesetzes vor dem Deutschen Bundestag.

3.3 Central political debates related migration, integration and asylum issues

In the election manifestos adopted by the political parties for the federal elections in 2005 immigration and attitudes to migrants are a major social issue. The key messages conveyed by the SPD, the CDU/CSU, Alliance 90/The Greens, the FDP and the Left Party can be described as follows¹⁸:

SPD: The Social Democrats argued that Germany had been receiving immigrants for a long time and that while in office they had taken important steps towards managing and limiting immigration and integrating migrants. The SPD expressly rejects “the existence of parallel societies” and “forced marriages”, advocating the consistent naturalisation of anyone “who has legally made Germany the focal point of their life”. Key points of their manifesto were:

- teaching German to children of non-German origins;
- broader provision of religious education about Islam in the German language by teachers trained in Germany or by recognised teaching staff supervised by school inspectors;
- particular support for women of foreign backgrounds.

CDU/CSU: The election manifesto of the CDU and CSU addresses migration under the motto “Restrict immigration, Strengthen integration”. It maintained that there were many well integrated foreigners living in Germany and “making their contribution to the common good”, but that there were also “immigrants from alien cultures with substantial integration deficits”. Immigrants should integrate into society “on the basis of our culture and legal order”, which is a basic tenet of the Christian Democrat position. The CDU and CSU also regard a command of German as the key to integration. Foreign parents should, therefore, do all they could to enable their children to “participate in the life and work opportunities offered by our country”. Key manifesto items are:

- restricting immigration into the labour market to skills which are in short supply and highly qualified workers;
- a requirement for new arrivals to attend integration courses;
- a requirement for spouses who join their partner must acquire a knowledge of German and a lower maximum age for children to join a parent;
- active support for Moslem women in Germany. The Christian Democrats also explicitly oppose forced marriages.

Bündnis 90/Die Grünen: The Green alliance describes civil and human rights for migrants and respecting humanitarian obligations to refugees as “core concerns” of their politics. They maintain that they applied these principles during government talks about the Immigration Act but that many Green ideas for reform had not yet been implemented. The manifesto therefore identifies several

¹⁸ Newsletter *Migration und Bevölkerung*, issue no. 7, September 2005.

urgent needs for change, for example with regard to the practice of granting successive periods of discretionary leave. *Bündnis 90/Die Grünen* declare their commitment to granting people who have been living in the country for many years a permanent entitlement to remain. Again, there should be encouragement to learn German. The children of refugees should be better integrated. The party would like to abolish residency restrictions, departure centres and the airport procedure and unambiguously opposes plans to set up refugee camps outside the EU. The Green alliance would like to reform asylum law as a whole to make it more “humane”. With the exception of the Left Party, only the Greens explicitly refer in their manifesto to people who are living or working illegally in Germany. They champion the right of these people to “health care, schooling and wages for their work” and advocate an “offer of legalisation” similar to measures undertaken in Spain, France, Belgium, Greece and the United States.

FDP: The Liberals also observe that Germany is and remains a country of immigration. They intend to work for an “objective discussion of the state of integration policy”. This would not focus entirely on new arrivals. They claim there are “a million foreigners and resettlers in Germany (...), of whom a proportion are by no means well integrated into our society”. The Liberals therefore demand a comprehensive approach to integrating immigrants who have been in Germany for some time and have not been able to attend the new integration courses. In return the FDP expects immigrants to display a “willingness to take advantage of integration programmes and in particular to learn the German language”. Another core demand is a procedure to grant regular status to young people who have been living in Germany for some time and attended school here.

The FDP champions cultural cohabitation but calls for an open debate about the problems of integration. “The emergence of ghettos, a lack of German language skills, crime and religious intolerance should not be ignored”, says the manifesto. It also reads: “Religious freedom should not be abused as an excuse for the violent treatment and oppression of women, forced marriages or preaching hatred”.

The Left.PDS: This party demands an end to a “rigorous fortress policy”. It advocates the continued harmonisation of asylum and migration policy in the EU “on the basis of human rights standards”. Core demands of the Left Party are:

- abolition of the law governing benefits for asylum seekers and residency restrictions;
- an opportunity for people living or working illegally in Germany to obtain a regular status;
- full implementation of the UN Convention on Children’s Rights;
- free language lessons for migrant children;
- acceptance of dual citizenship.

The migration policy priorities for the new German government are the integration of foreign nationals already living in Germany and the management of future immigration¹⁹. This is reflected in the coalition agreement published by the CDU/CSU and SPD on 11 November. The coalition parties devote almost three pages of their 226-page agreement²⁰ to the guiding principles behind their immigration and integration policies for the legislative period 2005-2009. The section is headed "Managing migration – Promoting integration" (Chapter VIII, "Security for our citizens"):

Integration: Integration will only succeed, states the agreement, if immigration is managed and limited. The integration of foreign nationals living in Germany must be seen as a task which cuts across many different policy fields. The *Bundesamt für Migration und Flüchtlinge* in Nuremberg should be developed into a centre of integration competence. One key component of integration policy is dialogue between religions and cultures. This needs above all to be conducted by the major Christian denominations, Jews and Moslems. Gender equality must be part of the agenda for this inter-religious dialogue.

Refugees, asylum and illegal residence: The new German government will seek to cooperate more closely with countries of origin and transit in order to combat the root causes of refugee flows and will similarly support such efforts by the European Union. Although the coalition partners favour an EU-wide approach to refugee policy, they stress that access to the labour market must remain a matter of national competence. Eleven EU Directives (cf. p. 26 ff.) are to be implemented in the form of a second law amending the Residence Act. The practical application of the Immigration Act that entered into force in January 2005 is to be reviewed. In the particularly sensitive field of illegal residence, attention must be devoted to feasible options.

In her government speech²¹ of 30 November 2005, Chancellor Angela Merkel described the integration of migrants as a key challenge in the present time. Integration would only succeed, she said, if non-German children were consistently involved in the process and if they had opportunities to learn German. Learning the German language should, therefore, be promoted in schools. Children should only be able to come to school if they had a command of German. If not, from their first day at school onwards there would be no chance of enabling them to lead a good life in Germany. Dialogue with Islam was also needed to encourage mutual understanding.

¹⁹ Newsletter *Migration und Bevölkerung*, issue no. 10, December 2005; Renner, Zeitschrift für Ausländerrecht, 2005.

²⁰ <http://www.bundesregierung.de/Anlage920135/Koalitionsvertrag.pdf>

²¹ <http://www.bundesregierung.de/Nachrichten-,12404.926301/regierungserklaerung/Regierungserklaerung-von-Bunde.htm#Integration>,

Interior Minister Schäuble characterised integration policy as a pivotal task for the new German government²². At the opening of an EU seminar on integrating immigrants in Berlin he said that integration was one of the most important challenges which politicians and society needed to tackle together²³. The goal of integration was peaceful, open and tolerant cohabitation in Germany. Respect for the rule of law and the social order was expected. Immigration would only work in the long run if people felt they were part of society and if society did not experience them as alien bodies. Integration was a cross-cutting task that concerned everybody. Federal, state and local bodies would all need to contribute in their own way to its success.

In January 2005 the German government presented its anti-discrimination bill (*Anti-diskriminierungsgesetz*)²⁴ to parliament for its first reading in the *Bundestag*. This draft legislation was the German government's response to various EU Directives which required implementation in domestic law. The bill not only prohibited discrimination on the grounds of race or ethnic origin, gender, religion or philosophy, disability, age and sexual identity; its provisions also covered discrimination of a particularly overt nature, such as cases where contracts are normally signed without visual contact or where such visual contact is of minor relevance. The statute would have been of relevance to the labour, civil and social codes and to law governing civil servants. The draft prompted a number of protests. The opposition parties and also representatives of housing administrations, employers and industrial associations vehemently rejected the proposed anti-discrimination act, arguing that the draft went far beyond EU legislation and compromised freedom of contract, partly because landlords and employers would incur the risk of legal proceedings and compensation payments, for example when recruiting or promoting staff. The opposition justified its objections in terms of the sheer number of facts constituting discrimination and the burden of proof placed on employers. The bill met with the approval of the German Trade Union Federation, the human rights organisation Pro Asyl and the Turkish Community in Germany. However, this anti-discrimination act proposed by the governing coalition of SPD and Greens failed in its passage through parliament. After the upper chamber, the *Bundesrat*, withheld its approval on 18 February 2005, the bill was referred to the Mediation Committee, which postponed deliberation of this item when it met on 5 September 2005 for the last time before the federal elections. This amounted to the death of this anti-discrimination legislation, because all bills not adopted by the old *Bundestag* are considered closed business once a new parliament is constituted. Every legislative proposal must then be submitted and debated afresh²⁵. In the coalition agreement of 11 November 2005 the new government confirmed that the EU equality directives must be transposed, but it did not offer any further details on the subject.

²² http://www.bmi.bund.de/cln_028/nn_662956/Internet/Content/Nachrichten/Reden/2005/11/BM_Schaeuble_Rede_BT_4_Sitzung.html,

²³ Federal Ministry of the Interior (*Bundesministerium des Innern*), press release of 19 December 2005.

²⁴ Federal Ministry of Justice (*Bundesministerium der Justiz*), press release of 15 December 2004.

²⁵ <http://www.bundestag.de/interakt/glossar/181211.html>.

In November 2004 Bavaria became the fifth state in Germany to adopt a law²⁶ prohibiting the wearing of the headscarf by Moslem women teaching in schools. Other states governed by the CDU/CSU – *Baden-Württemberg*, Hesse, Lower Saxony and *Saarland* – had already introduced such a ban. In Berlin the Neutrality Act passed by SPD and PDS parliamentarians in January 2005 now forbids the wearing of religious symbols, including Christian and Jewish ones, by civil servants (who include teachers). The history to this is an attempt since 1998 on the part of a Moslem teacher, Fereshta Ludin, a German of Afghan origin, to establish her right to wear her headscarf in the classroom through the court in *Baden-Württemberg*. In September 2003 the Federal Constitutional Court²⁷ ruled that a ban on wearing headscarves was admissible in principle. Ludin appealed to the judges against a legal amendment by the State of *Baden-Württemberg*, but her petition was rejected by the Federal Administrative Court in June 2004²⁸.

3.4 Institutional developments

By its Decree of 2 April 2003 the Federal Ministry of the Interior established a Council of Immigration and Integration Experts (*Sachverständigenrat für Zuwanderung und Integration*), which was attached to the *Bundesamt für Migration und Flüchtlinge*. The Immigration Council was asked to assess the impact of current immigration to Germany on the economy and labour market, to appraise progress in the integration of immigrants and to analyse Germany's reception and integration capacity. On 22 December 2004 the Ministry of the Interior repealed this Decree with effect from 31 December 2004. The Immigration Council therefore ceased to exist from 1 January 2005.

When the Act Renaming the Federal Border Guard (*Gesetzes zur Umbenennung des Bundesgrenzschutzes in Bundespolizei*) was proclaimed on 30 June 2005 the Federal Border Guard (*Bundesgrenzschutz*) became the Federal Police (*Bundespolizei*) with effect from 1 July 2005²⁹. This law, passed by parliament on 21 April 2005, thereby entered into force. The Act relates exclusively to this new name. It does not entail any change in remit or expansion of powers. The reason for the redesignation was that the force had assumed a broad range of duties that were no longer confined to protecting the border in the classical sense³⁰.

²⁶ Gesetz zur Änderung des Bayerisches Gesetzes über das Erziehungs- und Unterrichtswesen of 23 November 2004 (GVBl. p. 443, no. 21).

²⁷ BVerfG, Judgment of 24/09/2003 - 2 BvR 1436/02.

²⁸ BVerwG, Judgment of 24/06/2004 - 2 C 45.04.

²⁹ On the *Gesetz zur Umbenennung des Bundesgrenzschutzes in Bundespolizei* see http://www.bundespolizei.de/cln_030/nn_484498/DE/Home/_Startseite/_Umbenennung_anmod.html_nnn=true.

³⁰ Federal Ministry of the Interior, press release of 30 June 2005.

4. Legislative Developments in the Area of Migration and Asylum

4.1 Brief description of the general structure of the legal system in the area of migration and asylum

The basis³¹ of the laws on aliens which apply in Germany, including asylum and refugee law, is international law and European Community law, as well as German constitutional law and statute law. In the area of international law, the most important conventions are the Convention Relating to the Status of Refugees (known as the Geneva Refugee Convention), the Convention Relating to the Status of Stateless Persons, and the European Convention on Human Rights and Fundamental Freedoms. Citizens of the European Union and their family members have long been subject to Community provisions, which were combined in late 2004 in the Residence Act for EEC Nationals (*Aufenthaltsgesetz/EWG*) and the Ordinance on the Freedom of Movement (*Freizügigkeitsverordnung*) and since January 1 have been contained in the Freedom of Movement for EU Nationals Act (*Freizügigkeitsgesetz/EU*). Community law has become much more influential over the past few years. It is a direct result of Community law that EU citizens and citizens from EEA states (Iceland, Liechtenstein, and Norway) enjoy freedom of movement in Germany. Swiss citizens are in fundamentally the same position based on the Treaty on the Free Movement of Persons between Switzerland and the European Union. Transitional provisions apply to workers from the new Member States that joined the EU on 1 May 2004 (with the exception of Malta and Cyprus). Some third-country nationals are in a privileged position where entry and residence permits are concerned, including Turkish workers and their family members based on resolution 1/80 of the EEC/Turkey Association Council and persons from Central and Eastern European states according to the Europe Agreements (for example with Romania and Bulgaria). EU law also directly specifies the states outside the European Union whose nationals are subject to the requirement for a visa (EC Visa Regulation 539/2001 of 15 March 2001). Entry and subsequent short periods of residence are also governed by the rules of the Convention implementing the Schengen Agreement. Only long-term residence is exclusively governed by German entry requirements.

Entry into and residence in Germany by third-country nationals – unless they are covered by overriding Community law (including the Convention Implementing the Schengen Agreement) – are based on the provisions of the Residence Act and the Residence Ordinance (*Aufenthaltsverordnung*), as well as the Employment Ordinance (*Beschäftigungsverordnung*) and the Employment Procedure Ordinance (*Beschäftigungsverfahrensverordnung*). Such nationals may move to Ger-

³¹ See introduction by Renner, *Deutsches Ausländerrecht*, 20th ed., 2005. Beck-Texte.

many for family reunification or for employment (for self-employed and highly-qualified persons and exceptionally for specific activities or professions) or education (including language courses, university studies, and vocational training) and humanitarian reasons. The residence permit must always be obtained from a German diplomatic representation before entering Germany. It is either granted and renewed as a temporary residence permit (*Aufenthaltserlaubnis*) or granted as a permanent settlement permit (*Niederlassungserlaubnis*) (sec. 7 – 9 of the Residence Act).

Substantive and formal requirements for the admission of persons who have been persecuted for political reasons and other refugees are governed by Article 16a of the German Basic Law and by sec. 60 ff. of the Residence Act and the German Asylum Procedure Act (*Asylverfahrensgesetz*). An alien who invokes asylum law (asylum seeker) must undergo a recognition procedure whose details are specified in the Asylum Procedure Act. The *Bundesamt für Migration und Flüchtlinge*, which is based in Nuremberg, is responsible for conducting asylum procedures for all asylum seekers. The alien offices of the German states are responsible for matters related to residence during and after conclusion of the asylum procedure. Persons entitled to asylum are aliens who have been recognized by the *Bundesamt für Migration und Flüchtlinge* or an administrative court as being entitled to asylum pursuant to Article 16a of the Basic Law. They simultaneously have legal status under the Geneva Refugee Convention (sec. 2(1) of the Asylum Procedure Act). The term “Convention refugee” is used for aliens who are protected against deportation from Germany in application of the Geneva Refugee Convention even though they are not entitled to asylum pursuant to Article 16a of the Basic Law, for example because they entered Germany via a safe third country.

4.2 Legislative Developments

The German Immigration Act³² entered into force on 1 January 2005. It followed an extremely drawn-out legislative procedure that provoked controversy among the public and in the German Bundestag (lower house of parliament) and Bundesrat (upper house). The Immigration Act was finally adopted by the Bundestag on 1 July 2004 and received the necessary approval of the Bundesrat on 9 July 2004.

The Immigration Act provides the first legal framework that can be used to control and effectively limit immigration as a whole. Measures for the integration of immigrants who legally reside in Germany on a permanent basis have also been enshrined in the law for the first time. This is a historic break with the past. The Act guides and controls immigration according to the economic, political,

³² Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*) of 30 July 2004 (BGBl. I p. 1950).

and cultural interests of Germany. It also serves to fulfil the humanitarian obligations of the Federal Republic of Germany³³.

4.2.1 Components of the Immigration Act

The Immigration Act is made up of the Act on the Residence, Employment and Integration of Aliens in Germany (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*) (Residence Act), the Freedom of Movement Act (*Freizügigkeitsgesetz*), and amendments to the Asylum Procedure Act, the Central Aliens Register Act (*Ausländerzentralregistergesetz*), the Nationality Act (*Staatsangehörigkeitsgesetz*), the Federal Displaced Persons Act (*Bundesvertriebenengesetz*), the Asylum Seekers Assistance Act (*Asylbewerberleistungsgesetz*), and other laws. As enabled by the Immigration Act, legal ordinances have been enacted which govern the procedure for and authorization of aliens living in Germany (Employment Procedure Ordinance - *Beschäftigungsverfahrensverordnung*) and arriving aliens (Employment Ordinance - *Beschäftigungsverordnung*) to exercise a profession. A new Residence Ordinance combines subject areas that were previously governed by the Implementing Ordinance to the Aliens Act (*Durchführungsverordnung zum Ausländergesetz*), the Ordinance on Fees for Aliens (*Ausländergebührenverordnung*), the Transfer of Data on Aliens Ordinance (*Ausländerdateienverordnung*), and the Files on Aliens Ordinance (*Ausländerdateienverordnung*). As a matter of principle, citizens of a Member State of the European Union do not fall within the scope of the Residence Act because as EU citizens they benefit from freedom of movement. The legal status of EU citizens is governed by the new Freedom of Movement Act.

4.2.2 Reduction of the number of residence titles

There are now only two instead of the previous five types of residence permit: the (temporary) residence permit and the (permanent) settlement permit (sec. 7-9 of the Residence Act). The right of residence is no longer focused on residence documents, but rather to the purpose of residence. These are: gainful employment, education, subsequent immigration of dependents, and humanitarian reasons. The previous two-stage permit granting procedure (issuance of work permit and residence permit) has been replaced by an internal coordination procedure. In future, foreigners will only have to apply to the aliens office that has jurisdiction. The aliens office obtains approval of the work permit directly from the labour administration and issues the work permit along with the residence permit in a single act (one-stop government).

³³ German Federal Ministry of the Interior, Zuwanderungsrecht und Zuwanderungspolitik, Berlin.

4.2.3 Labour migration

A permanent right of residence for highly-qualified people is possible from the outset; they can be issued a settlement permit immediately (sec. 19 Residence Act). Family members accompanying the person or joining the person later are entitled to take up employment. The settlement of self-employed persons is encouraged. Self-employed persons generally receive a residence permit if an important economic interest or regional need is involved, the activity is expected to have positive effects on the economy, and financing is secure. That is generally the case if at least ten jobs are created and at least €1 million is invested (sec. 21 of the Residence Act). Foreign students may remain in Germany for one year after successful conclusion of their studies to look for a job in line with their qualifications (sec. 16 of the Residence Act).

The “recruitment stop” has been maintained as a matter of principle for people with little or no qualifications, as well as those with qualifications. However, there is an exception for people with qualifications, who will be granted a work permit in justified individual cases if such employment is in the public interest (sec. 18(4) of the Residence Act). Citizens of EU Accession Countries will have access to the labour market for qualified jobs in accordance with the priority principle, i.e., that no German or person with equivalent rights is available to take the job. However, citizens of EU Accession Countries have priority over citizens of non-EU countries. A residence permit may also be granted if there are special privileges based on reciprocity under international law (sec. 21(2) of the Residence Act). A settlement permit can be issued after three years if the planned activity has successfully taken place and it is certain that the person can support himself or herself.

4.2.4 Humanitarian immigration

Refugee status under the Geneva Convention is now also granted in the case of non-state persecution based on the EU Asylum Qualification Directive (Refugee status under sec. 60(1) of the Residence Act). Protection against gender-specific persecution is now expressly enshrined in the Act because it states that persecution due to membership in a specific social group can also exist if a threat to life, physical inviolability, or freedom is solely based on gender (sec. 60(1) of the Residence Act). The status of persons eligible for subsidiary protection has been improved: To the extent there is a prohibition of deportation, a residence permit should be granted unless travel to another state is possible and can reasonably be expected, there has been a violation of obligations to cooperate, or severe violations of human rights or criminal offences have been committed (sec. 25(3) of the Residence Act).

The intention, to the extent possible, is to avoid successive granting of exceptional leave to remain in the country if there are barriers to deportation. Therefore, the Act states that a residence permit should be granted if the obligation to leave the country cannot be complied with within 18 months and the barriers to return are not the person’s fault (sec. 25(5) of the Residence Act). In contrast,

the obligation to leave Germany which is imposed on persons who themselves are responsible for the impediments to return and for example conceal their identity or have destroyed their passport will be enforced more consistently.

4.2.5 Asylum procedure

The position under laws on residence of persons with status under the Geneva Refugee Convention (refugee status under sec. 60(1) of the Residence Act) has been aligned with the position of persons entitled to asylum (Article 16a of the Basic Law). Both groups initially receive a temporary residence document that can be consolidated after three years if the prerequisites for recognition continue to exist. In the case of persons entitled to asylum and Geneva Convention refugee status, before a permanent right of residence is granted it is determined after three years have passed whether circumstances in the country of origin have changed (sec. 26(3) of the Residence Act). That verification should generally be done on the basis of the situation reports of the German Foreign Office. Holders of the status of Geneva Convention refugee have complete access to the labour market (sec. 25(2) of the Residence Act), which was previously the case only for persons entitled to asylum.

When the first stage of the Immigration Act entered into force on 1 September 2004, the system of the independent single decision-maker for individual asylum applications at the *Bundesamt für Migration und Flüchtlinge* was abandoned. At the same time, the institution of the Federal Commissioner for Asylum Affairs (*Bundesbeauftragter für Asylangelegenheiten*) was abolished to guarantee uniform practice when rulings and decisions are handed down by the Federal Office and the courts. Legislators expect that this will accelerate the asylum procedure and make decisions more consistent.

4.2.6 Promotion of integration

The Residence Act includes a legal framework of minimum state requirements for integration (language courses and orientation courses) (sec. 43 ff. of the Residence Act). New immigrants who remain in Germany permanently are entitled to attend integration courses (sec. 44(1) of the Residence Act). New immigrants without a knowledge of German are required to attend (sec. 44a(1) of the Residence Act). If the alien fails to fulfil this obligation, the responsible aliens office informs the alien of the consequences of failure to fulfil this obligation (sec. 44a(3) of the Residence Act). Failure to attend integration courses will be taken into account when an extension to the residence permit is requested (sec. 8(3) of the Residence Act), which can result in a refusal to extend the residence permit. It is also possible to reduce payments to recipients of social-welfare benefits for as long as they do not attend (sec. 44a(3) 3 of the Residence Act). Participation in integration courses is also a regular requirement for granting of a permanent residence permit (establishment permit, second sentence of sec. 9(2) of the Residence Act). Successful participation in the course

also allows the time for naturalization to be reduced from eight to seven years (sec. 10(3) of the Nationality Act). Alien offices may require aliens who have already been in Germany for a prolonged period and who receive Unemployment Benefit II or who are in particular need of integration to attend such courses when places are available (sec. 44a of the Residence Act). Aliens already living in Germany and EU citizens may be admitted to a subsidized integration course if places are available.

The Immigration Act also states that the German Federal Ministry of the Interior or an agency designated by it may develop a national integration program for Germany in conjunction with the German states, local communities, commissioners for aliens, and volunteer groups which will determine what services are already offered by the national government, the states, the local communities, and private sponsors and make recommendations on integration services to be offered in the future (sec. 45 of the Residence Act).

The “Ordinance on the Provision of Integration Courses for Aliens and Returning Ethnic Germans” (*Verordnung über die Durchführung von Integrationskursen für Ausländer und Spätaussiedler*) (Integration Course Ordinance) was published in the German Federal Law Gazette³⁴ on 13 December 2004. The aim of the integration course for immigrants is to give them a sufficient knowledge of the German language and to provide knowledge about everyday life in Germany, as well as concerning the legal system, culture, and history of Germany and the principles of the rule of law, equal rights, tolerance, and religious freedom. Sufficient knowledge of the German language and knowledge about the societal, cultural, and economic life and the standards and values of our society are the key to successful integration.

The details of the Integration Course Ordinance can be summarized as follows³⁵: The objective of the language course is for the participants to acquire “sufficient linguistic proficiency”. This corresponds to level B 1 on the scale of the Common European Framework of Reference for Languages. This enables immigrants to operate independently during everyday life in their surroundings and conduct a conversation in accordance with their age and level of education and express themselves in writing. The orientation course provides everyday knowledge and familiarity with the legal system, culture, and history of Germany. In particular, immigrants are to be familiarised with the values of a democratic state and the principles of the rule of law, equal rights, tolerance, and religious freedom.

The integration course includes a basic and an advanced language course with a total of 600 hours of instruction and an orientation course offering 30 hours of instruction. The basic and ad-

³⁴ (BGBl. part I no. 68 of 13 December 2004, p. 3370 ff).

³⁵ <http://bundesrecht.juris.de/intv/index.html> (text in German only)

vanced language courses are divided into three blocks of 100 hours each. This modular structure over a total of six 100-hour course segments allows participants to be divided according to prior knowledge and learning speed, and also offers the flexibility to change courses. The orientation course in the German language follows the language course. The language course includes a minimum of five and a maximum of 25 hours of instruction per week. The number of participants is limited to a maximum of 25 people per course. It is also possible to repeat or skip course segments; it is also possible to change to another course provider after a segment ends. A language test that leads to a certificate in German is given at the end of the integration course, and a test follows the orientation course so that successful participation in the integration course can be documented.

Anyone can make an arrangement with the individual course provider to attend an integration course. However, financial support is provided only for people who are entitled or required to attend an integration course under the Immigration Act or who have been authorized by the *Bundesamt für Migration und Flüchtlinge* to attend a course. The *Bundesamt* coordinates the integration courses offered throughout Germany. The Federal Office uses private and public providers to organize integration courses; they are chosen during an authorization procedure.

4.2.7 Citizenship and Naturalization

In the area of case law, the Federal Administrative Court has specified the requirements for the level of German proficiency required of candidates for naturalization. The Court decided in late 2005³⁶ about the request for naturalization of two aliens who had lived and worked in Germany for 20 and 27 years respectively, whose action in the lower court had failed solely due to insufficient linguistic proficiency. The Nationality Act states that the right to naturalization depends among other things on “sufficient proficiency in the German language”. Both plaintiffs can speak German, but one of them can neither read nor write and the other can read but not write German. Their claim that they have a right to naturalization depends on whether and to what extent proficiency in written German is also required. The Federal Administrative Court affirmed that integration into German life requires linguistic proficiency. Because the Nationality Act does not merely state that the ability to hold “a simple conversation in German” is sufficient, it requires as a matter of principle both oral proficiency and a certain proficiency in written German. According to the Court, however, it is sufficient if the alien can correspond in writing in the family-personal and business sphere, as well as in dealings with authorities and agencies, although the applicant for naturalization is not required to be able to express himself in writing in his own hand. If an applicant for naturalization cannot himself write German, it is sufficient if he can read a German language text from everyday life and dictate German, as well as check the correctness of what was written by the other person

³⁶ BVerwG, rulings of 20 October 2005 - 5 C 8.05 and 5 C 17.05.

or using technical assistance, and therefore “support” the written statement as his own. The Federal Administrative Court affirmed fulfilment of these prerequisites in one of the two cases. In the case of the person who was illiterate, the prayer for relief was unsuccessful based on those standards.

4.3. Implementation of EU Legislation

During the reporting period, the German federal government did a great deal to prepare a draft law transposing the directives of the European Union on residence and asylum into national law. Chapter VIII, “*Sicherheit für unsere Bürger*” (Safety for our citizens”), and section 1.2, “*Migration steuern – Integration fördern*” (Control migration – promote integration), of the coalition agreement of the CDU/CSU and SPD political parties agree on 11 EU directives in the area of aliens and asylum which are to be transposed into national law in a second Act Amending the Residence Act. A legislative initiative by the German federal government which was prepared in spring 2005 could not proceed because, due to political events at the federal level in Germany, conclusion of the legislative procedure before the end of the 15th legislative period of the German Bundestag could not be expected³⁷. The Act is to be brought into the parliamentary legislative procedure immediately. It transposes directives that were adopted by the Council of the European Union from November 2002 through November 2004. Eight directives in the area of aliens and freedom of movement include measures related to immigration, as well as the harmonization of provisions to protect against and reduce illegal immigration. Many parts of German laws on aliens are already in accordance with the directives, so only slight changes are necessary. In particular, however, the need to create new laws on residence and new admission procedures will require comprehensive changes in the Residence Act and the Residence Ordinance to implement some directives.

The following summary shows the progress of transposition of Community legislation into German laws on migration, as well as plans for such transposition:

| Legislation | Transposition deadline | Progress of the transposition procedure |
|---|------------------------|--|
| Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. <i>(EU Official Journal no. L 328 of 05 Dec. 2002, p. 17),</i> entry into force on 5 December | 5 December 2004 | The Directive has already been transposed into German law in the Immigration Act, which entered into force on 1 January 2005. In accordance with the provisions of the Directive, sec. 95-97 of the Residence Act contain the corresponding criminal provisions on the penalties for unauthorised entry and facilitation of such entry. Attempted facilitation is not yet a criminal act, but that is to be intro- |

³⁷ German Bundestag, document 16/80 of 23 November 2005.

| | | |
|---|-----------------|--|
| 2002 | | <p>duced into the second Act Amending the Residence Act, which is currently in preparation, and other laws.</p> <p>The Commission initiated infringement proceedings (2005/0049) for failure to transpose the Directive in sufficient time in a formal notice of complaint sent on 4 February 2005. In response to the statement with reasons sent by the EC Commission on 5 July 2005, Germany asked in a message dated 13 September 2005 for the infringement proceedings to be suspended for the time being due to the planned re-election of the German Bundestag on 18 September 2005 and promised to provide a detailed schedule for the Second Amending Act. At the same time, formal notice was given of partial transposition of the Directive.</p> |
| <p>Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification (EU Official Journal no. L 251 of 03 Oct. 2003, p. 12), entry into force on 3 October 2003.</p> | 3 October 2005 | <p>Many of the provisions on family reunification in the Immigration Act are already based on the Directive. Only a few marginal additions to the Residence Act are necessary, such as a specification of the length of validity of residence permits for family members, which is currently provided by administrative practice. The pending change in the Residence Act is intended primarily to provide better protection against forced marriage for young aliens by specifying a minimum age for subsequent immigration of spouses. Including a reason for the exclusion of subsequent immigration by family members in the case of fictitious marriages is intended to prevent the misuse of a right of residence, particularly for illegal purposes such as forced prostitution. Other planned changes to applicable law include allowing subsequent immigration of unmarried minor children of the spouse of the alien who has custody and pays for the support of the children, as well as the mandatory waiver of documentation promising living support for family members joining refugees under the Geneva Refugee Convention under certain conditions.</p> |
| <p>Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (EU Official Journal no. L 016 of 23 Jan. 2002, p. 44), entry into force on 23 January 2003.</p> | 23 January 2006 | <p>The provisions of the Directive require a change in the Residence Act, among other things by creating a "settlement permit – long-term residence for EC nationals" and creating provisions on the mobility of people from other Member States who are entitled to long-term residence by introducing a new element for granting of such status. Provisions on the intra-community exchange of data about the granting of long-term residence and on implementation of intra-community repatriation measures, including the "consultation procedure" intended for this, are also required.</p> |

| | | |
|--|------------------------|---|
| <p>Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities</p> <p><i>(EU Official Journal no. L 261 of 06 Aug. 2004, p. 19),</i></p> <p>entry into force on 6 August 2004.</p> | <p>6 August 2006</p> | <p>The Directive is to be transposed by the Act Amending the Residence Act, which is in preparation, and other laws. This includes creation of a residence permit for temporary residence for the duration of participation in criminal proceedings with a release from general requirements for granting of such a permit. The Residence Act must also contain a reflection period of at least four weeks before leaving the country so the person can consider cooperating with the competent authorities.</p> |
| <p>Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service</p> <p><i>(EU Official Journal no. L 375 of 23 Dec. 2004, p. 12),</i></p> <p>entry into force on 12 January 2005.</p> | <p>12 January 2007</p> | <p>Some adjustments to the provisions on the admission of students, creation of the corresponding rules on mobility in the Residence Act, and an adaptation of provisions on the cancellation of residence permits will be contained in the pending amendment to the Residence Act.</p> |
| <p>Council Directive 2005/71/EC of 12 November 2005 on a specific procedure for admitting third-country nationals for purposes of scientific research</p> <p><i>(EU Official Journal no. L 289 of 03 Nov. 2005, p. 15),</i></p> <p>entry into force on 23. November 2005.</p> | <p>12 October 2007</p> | <p>Transposition of the Directive primarily requires creation of a separate element for granting of a residence permit for “researchers” and the transposition of mobility provisions into the Residence Act, as well as inclusion of the admission procedure in the Residence Ordinance.</p> |
| <p>European Parliament and Council Directive 2004/38/EC of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC,</p> | <p>29 April 2006</p> | <p>Laws on residence for EU citizens have been changed and it is now governed at the national level by the Immigration Act. This overall revision anticipated the transposition of the Directive in two important areas. For example, the abolition of the residence permit for EU citizens which is specified by the Directive is already provided for; there has also been a right of permanent residence at the national level since entry into force of the Freedom of Movement Act for EU Nationals (promulgated as Article 2 of the Immigration Act) on 1 January 2005 – although only for a limited group of people. Other adjustments to the Freedom of Movement Act for EU Nationals relate to the definition of family mem-</p> |

| | | |
|---|--|---|
| 90/365/EEC and 93/96/EEC <i>(EU Official Journal no. L 158 of 30 April 2004, p. 77),</i> entry into force on 30. April 2004. | | bers, expansion of the right of permanent residence, the creation of provisions on its continuation during long-term absence from German territory, and the continuation of the right of residence for family members after the person concerned dies or moves away (EU citizens) while simultaneously avoiding "chains" of subsequent immigration by family members. |
|---|--|---|

The three Directives on asylum whose implementation is pending represent the central elements of the harmonization of asylum law in the European Union. The harmonization that will require changes in the Asylum Procedure Act and the Residence Act involves all main aspects related to asylum: the substantial prerequisites for providing protection, the related status rights, structuring of the asylum procedure, and the living conditions of the asylum seekers. Here are the details:

| Legislation | Transposition deadline | Progress of the transposition procedure |
|--|------------------------|---|
| Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the Member States <i>(EU Official Journal no. L 031 of 06 Feb. 2004, p. 18),</i> entry into force on 6 February 2003. | 6 February 2005 | <p>Most of the conditions for accepting asylum seekers which are specified in the Directive have already been fulfilled under applicable law. The Asylum Procedure Act needs to be changed only in two rather marginal areas. They relate to the obligation to inform asylum seekers about their rights and obligations under the asylum procedure within a specified time limit and to issue them the preliminary residence permit (<i>Aufenthaltsgestattung</i>) within a specific time limit.</p> <p>The Commission initiated infringement proceedings (2005/0049) for failure to transpose the Directive in sufficient time in a formal notice of complaint sent on 4 February 2005. In response to the statement with reasons sent by the EC Commission on 5 July 2005, Germany asked in a message dated 13 September 2005 for the infringement proceedings to be suspended for the time being due to the planned re-election of the German Bundestag on 18 September 2005 and promised to provide a detailed schedule for the Second Amending Act. At the same time, formal notice was given of partial transposition of the Directive.</p> |

| | | |
|--|-------------------------|---|
| <p>Council directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted</p> <p><i>(EU Official Journal no. L 304 of 30 Sep. 2004, p. 12),</i> entry into force on 20 October 2004.</p> | <p>10 October 2006</p> | <p>The core elements of the so-called Qualification Directive have already been included in German law in the Immigration Act. They include taking into account non-state and gender-specific persecution within the framework of recognizing refugees and the use of exclusion clauses in the case of liability to punishment within the framework of the provision of subsidiary protection. However, complete transposition of the Directive still requires a series of specific amendments to the Asylum Procedure Act and the Residence Act. Among other things, standards must be set for the requirements for recognition of refugee status and the provision of subsidiary protection. These include the concept of internal protection and rules for interpreting grounds for persecution. However, because the majority of the provisions in the Directive correspond to the German legal situation, which is based on case law, enshrining them in laws tends to be declaratory. Adjustments are necessary in the area of subsidiary protection to the extent the German provisions are covered by the scope of the Directive.</p> |
| <p>Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status</p> <p><i>(EU Official Journal no. L 326 of 13 Dec. 2005, p. 13)</i></p> | <p>30 November 2007</p> | <p>The content of the Directive on procedures substantially corresponds to the existing German legal situation; no fundamental changes in the legal system are required. Specific changes to provisions in the Asylum Procedure Act include specifying the inclusion of additional requirements for providing information to asylum seekers, minor procedural adjustments (such as in the follow-up procedure), and a change in the provision on safe countries of origin (inclusion of an EC list of safe countries which has not yet been prepared).</p> |

5. Policy Implementation Issues

5.1. Labour Market and Employment

Since 1 January 2005 there has been only one benefit for integration into the labour market and for living support for all employable people who require assistance (recipients of unemployment assistance and employable social-welfare recipients). The previous unemployment and social-welfare assistance has been combined into basic security for job seekers by the “Fourth Act for Modern Services on the Labour Market” (*Viertes Gesetz für moderne Dienstleistungen am Arbeitsmarkt*) and is one of the most important reform processes of Agenda 2010³⁸. All employable people who require assistance and who are between the ages of 15 and 65, as well as their dependents³⁹ living with them in a “community of need” (*Bedarfsgemeinschaft*)⁴⁰ are entitled to the new benefit. An employable person who requires assistance is anyone who works at least three hours a day and cannot support himself. The entitlement exists independent of whether the person previously acquired a right to the unemployment benefit or has ever been employed. When the person requiring assistance is employable but cannot take a job because of attending school, caring for children, or looking after relatives who require care, that person is not required to accept any job that is offered and continues to receive Unemployment Benefit II.⁴¹ However, all other employable persons who require assistance are obligated to accept any job offered, including those known as “one-euro jobs”, from which the worker earns one euro more than any benefits received. A total of 4,381,040 people were unemployed in Germany in 2004; 1,681,129 were long-term unemployed and therefore covered by the *Hartz IV* labour market reform⁴². An average of 4,863,000 people were registered as unemployed in 2005 (11.7% based on the entire civilian work force)⁴³. That means 482,000 more people were unemployed than in 2004. A total of 681,276 aliens were registered as unemployed in 2005.

³⁸ Agenda 2010 is a comprehensive programme of the German federal government on sustainable safeguarding of the welfare state, for more work, and to strengthen Germany as a place to do business. It was approved by the federal government in 2003 and includes reforms in many different areas, such as the labour market, health, education, and training policy.

³⁹ Employable persons requiring assistance receive unemployment benefit II, and unemployable members of the community of need receive the social benefit (*Sozialgeld*).

⁴⁰ The community of need includes, in addition to the employable person requiring assistance, the parents, unmarried minor children, partners in a situation similar to marriage, spouses who are not permanently separated, or partners in a registered life partnership who are living in the household.

⁴¹ Statistics of the *Bundesagentur für Arbeit* (German Federal Employment Agency). *Der Übergang von der Arbeitslosen- und Sozialhilfe zur Grundsicherung für Arbeitsuchende*. Special report. Nuremberg, August 2005.

⁴² Statistical Yearbook 2005.

⁴³ Bundesagentur für Arbeit, *The Labour and Training Market in Germany*, monthly report for December and for 2005.

The pooling of unemployment assistance and social-welfare assistance into the Unemployment Benefit II had the following effect on migrants living in Germany: Due to structural changes on the labour market, the number of migrants holding jobs subject to social security payments has been decreasing for many years. Some 2.12 million foreign workers were counted in 1996, but that had dropped to around 1.79 million by 2004, a 15.6% decline⁴⁴. Foreign workers were most strongly affected by job cuts in the mining, energy, and construction sector.

Unemployment among migrants in Germany has been rising constantly since 2001. There was a 22% increase from 2000 to 2004, when an average of 545,080 aliens in Germany were unemployed. The unemployment rate in 2004 was 20.1%, while in comparison the total unemployment rate in Germany was 10.5%⁴⁵. The number of unemployed aliens rose to 681,276 people in 2005⁴⁶. In 2003, some 68% of all unemployed migrants in Germany were between 25 and 45 years old – an age group that tends to have the best opportunities on the labour market. Twenty-one percent were aged between 45 and 55, and 11% were between 55 and 65.⁴⁷

However, according to a study by the OECD, an international comparison shows that the integration of male immigrants into the labour market was relatively good in terms of employment and unemployment rates, particularly given the low level of education among most of them and the economic situation in Germany. However, employment rates for female immigrants, particularly Turkish women, are very low. This is partly the result of a policy of limiting the access of immigrants' spouses to the labour market, according to the OECD study.⁴⁸ Most of those legal barriers have been eliminated by the new Immigration Act.

If statistics on unemployed aliens are broken down by nationality, it will be seen that a total of 20% of the unemployed aliens came from the EU and 80% from non-EU countries. Forty-one percent of the unemployed people from EU Member States were Italians. The Greeks occupied second place at 22%. Forty percent of unemployed people from non-EU countries were Turks, and another 8% came from Yugoslavia.⁴⁹ A total of 184,096 aliens were long-term unemployed, i.e., had been unemployed for more than one year, in September 2003. That number was 205,299 in July 2004, accounting for 38% of unemployed aliens. The long-term unemployed are the subgroup that has been most strongly affected by the *Hartz IV* labour market reform since January 2005. While the benefit paid to most of the long-term unemployed has been reduced, there tended to be less of an effect on employable recipients of social-welfare assistance, the other subgroup that was strongly

⁴⁴ Statistical Yearbook 2005.

⁴⁵ Percentage of unemployed people based on the entire civilian work force.

⁴⁶ Bundesagentur für Arbeit, The Labour and Training Market in Germany, monthly report for December and for 2005.

⁴⁷ <http://www.isoplan.de/aid/index.htm?http://www.isoplan.de/aid/2004-3/statistik.htm> (September 2004).

⁴⁸ OECD, The Labour Market Integration of Immigrants in Germany, 2005.

⁴⁹ See 49.

affected by *Hartz IV*, and in some cases their situation even improved. Indirect benefits have also improved: employable recipients of social-welfare assistance generally have health, pension, and long-term care insurance.⁵⁰

Special rules for the basic security of jobseekers apply to aliens living in Germany. For example, aliens who receive benefits under the Asylum Seeker Assistance Act⁵¹ are not entitled to basic security benefits. Legislators do not provide for integration into the labour market of recipients of benefits under the Asylum Seeker Assistance Act until a final decision is made on their residence status. In contrast, aliens who are entitled to work or who are authorized to work by the *Bundesagentur für Arbeit (BA)* are entitled to unemployment benefit II. There is also an entitlement to basic security if BA would theoretically allow employment that accords “subsidiary access to the labour market”⁵² after one year of residence by the alien in Germany based on a permit or exceptional leave to remain. This ultimately means that most aliens living in Germany are given access to basic security benefits.⁵³

5.2 Education

Foreign pupils were included in the general requirement to attend school in the mid-60’s, and since then they have been on an equal footing with their German age cohorts in that respect. However, there is no actual equality of opportunity in the educational system. The international comparative studies PISA⁵⁴ and IGLU have shown that educational opportunities for children and young people in Germany are more dependent on the social status of their parents than in any other country of comparison⁵⁵. Even the Special Rapporteur on the Right to Education of the United Nations Commission on Human Rights, Vernor Munoz Villalobos, during a ten-day trip to Germany, criticized discrimination against immigrant children in the German educational system based on their origin⁵⁶.

The level of school-leaving certificates tends to show an improvement in the schooling of foreign youngsters, but serious differences remain between Germans and foreigners. At the end of the 1970s almost half of foreign children left general-education schools without a certificate, but that had dropped to 18.1% by the 2003/2004 school year. However, that means that every fifth foreign child still leaves school without a certificate, while the figure for Germans is one in 12. Most foreign

⁵⁰ See 49.

⁵¹ Applies to asylum seekers, aliens with exceptional leave to remain in the country (*Duldung*), and aliens with temporary suspension of deportation (*vollziehbar Ausreisepflichtig*).

⁵² No German or other alien with priority may be available to take the job.

⁵³ Report of the Federal Commissioner for Migration, Refugees, and Integration on the situation of aliens in Germany, Berlin, June 2005.

⁵⁴ PISA - Programme for International Student Assessment, IGLU – Internationale Grundschul-Lese-Untersuchung.

⁵⁵ Federal Ministry of Health and Social Security, Social-Welfare Report 2005, Berlin.

⁵⁶ *Süddeutsche Zeitung* newspaper of 22 February 2006.

pupils still achieve the “*Hauptschulabschluss*” (completion of lower secondary education). Although almost 70% of German school-leavers obtain a “*mittlerer Abschluss*”, which qualifies a pupil for admission to courses of upper general and vocational secondary education, or a higher certificate, barely 40% of foreign young people leave school with such certificates. The difference between German and foreign pupils is particularly dramatic where the general qualification for university entrance is concerned: One-quarter of Germans leave school with an “*Abitur*” university entrance diploma, but not even one-tenth of foreigners achieve this (see also [Table 1](#)).⁵⁷

The situation of young people with a “migration background” is still unfavourable when making the transition from school to the vocational training system and the labour market. Participation in vocational training by foreign young people has dropped off since the mid-90’s after improving in the mid-80’s. While only 14% of young foreigners attended vocational training in 1979-80, the rate had risen to 44% by 1994 (Germans: 70%), its maximum so far. A new calculation method has now been introduced, so comparisons of the data are subject to limitations. A vocational training rate of 27.1% was calculated for 2003. One cause of the decline in participation in vocational training by young foreigners is the overall deterioration in the situation on the vocational training market. Generally speaking, foreign young people do not begin their training immediately after they leave school. Their path on the labour market is characterized by detours and repetitions. Forty percent of all young foreigners do not receive any vocational training after leaving school⁵⁸

To improve general opportunities for young people on the vocational training market, representatives of the German federal government and German trade and industry signed the National Pact for Education and Training and Young Skilled Workers, known as the “Training Pact” (*Ausbildungspakt*) on 16 June 2004 for an initial three-year period. In the Pact, industry undertook to create 30,000 new apprenticeship training positions annually over the three-year period. The additional 22,500 apprenticeship training positions in 2004 represented a 4.4% increase.

In addition to the new apprenticeship training positions in companies, trade and industry promises to offer 25,000 positions in preparatory courses for young people (EQJ Programme) each year. Some 17,500 EQJ positions had been filled by July 2005, around 10% by foreign young people. The intention is for the Programme to give young people who for individual reasons have a limited chance of being placed and also do not find an apprenticeship training position during the additional national placement campaign the opportunity to participate in an internship in companies for six to 12 months. The first study results show a positive correlation between the EQJ Programme and subsequent vocational training in the company offering the internship. However, no specific

⁵⁷ German Federal Statistical Office (<http://www.destatis.de/basis/d/biwiki/schultab16.php>)

⁵⁸ German Federal Ministry of Education and Research, Vocational Training Report 2005, Berlin.

data has been published to show the effectiveness of this measure specifically in reference to young foreigners.⁵⁹

The tide turned on the apprenticeship training position market in 2004 thanks to those efforts and the joint additional placement campaign conducted by BA and the professional associations. For the first time since 1999 there was an increase in the number of apprenticeship training agreements signed. However, the situation remains tight on the market for apprenticeship training positions.⁶⁰

In addition to the general measures intended to improve the situation for education and training of young people, some programs focus specifically on the advancement of children and young people with a migration background. The programme sponsored by the Joint Conference of the Federal Government and the Federal States (BLK),⁶¹ "Advancement of Children and Young People with a Migration Background" (FörMig) was launched on 1 September 2004 and will run for five years. The programme concentrates on language instruction and promotion. The greatest attention is being paid to interfaces in the educational system when making the transition from the elementary to the primary area and from general education to vocational training, as well as cooperation by the participants who are involved. Special topics emphasised by the programme include language instruction based on established individual language abilities, language instruction throughout all areas of training and education, and vocational training and the transition to a profession.⁶²

With the programme "Promoting Competences - Vocational Qualification for Target Groups with Special Needs (BQF Programme)", which was created in 2001 and runs through 2006, the federal government is making a contribution to further developing the existing system of support for vocational training of disadvantaged young people in terms of structure, quality, and content, thereby making it more efficient and reliable. The programme has received some €60 million in funding. About half is financed by the European Social Fund.⁶³

⁵⁹ See 58.

⁶⁰ See 58.

⁶¹ Joint Conference of the Federal Government and the Federal States on Education Planning and Research Promotion

⁶² German Federal Ministry of Health and Social Security, Social Report 2005, Berlin.

⁶³ German Federal Ministry of Education and Research, Vocational Training Report 2005, Berlin.

The BQF Programme emphasises the improvement of vocational qualification opportunities for young people with a migration background. Increasing this target group's participation in vocational training takes centre stage. Creating local and regional career qualification networks (BQNs) for young people with a migration background will promote cooperation and networking of the primary participants, such as chambers of commerce and industry, employment agencies, municipal organizations, trade unions, schools, trainers, and particularly the migrant organizations at the local and regional level, thereby improving the vocational and social integration of young migrants of both sexes.⁶⁴

⁶⁴ German Federal Ministry of Health and Social Security, Social Report 2005, Berlin.

Table 1

| General education | | | | |
|---|----------|--------------------------|---------|--------------------|
| School-leavers/graduates in the 2003/04 academic year by type of education completed | | | | |
| Type of education completed | Units | School-leavers/graduates | | |
| | | Total | Germans | Foreign nation-als |
| Total | | | | |
| Lower secondary education not completed | 1 000 | 82.2 | 66.9 | 15.3 |
| Completed lower secondary education (after grade 9) | 1 000 | 246.2 | 211.6 | 34.6 |
| Intermediate school leaving certificate (after grade 10) | 1 000 | 419.8 | 393.7 | 26.1 |
| School-leaving certificate entitling to higher education at colleges of applied science | 1 000 | 11.7 | 10.6 | 1.1 |
| School-leaving certificate entitling to general higher education | 1 000 | 226.4 | 218.9 | 7.5 |
| Total ¹ | 1 000 | 986.3 | 901.7 | 84.6 |
| Distribution of types of education completed - total (total = 100) | | | | |
| Lower secondary education not completed | per cent | 8.3 | 7.4 | 18.1 |
| Completed lower secondary education | per cent | 25.0 | 23.5 | 40.9 |
| Intermediate school leaving certificate (after grade 10) | per cent | 42.6 | 43.7 | 30.8 |
| School-leaving certificate entitling to higher education at colleges of applied science | per cent | 1.2 | 1.2 | 1.3 |
| School-leaving certificate entitling to general higher education | per cent | 23.0 | 24.3 | 8.9 |
| Total ¹ | per cent | 100 | 100 | 100 |
| ¹ Differences might result from rounding. | | | | |
| Status: October 2005. | | | | |

6. Literature

Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration (2005): Bericht über die Lage der Ausländer und Ausländerinnen in Deutschland, Bonner Universitäts Bibliothek.

Bundesamt für Migration und Flüchtlinge (2005): Migration, Integration und Asyl in Zahlen, 13th Edition.

Birsl, Ursula, (2005): Migration und Migrationspolitiken im Prozess der europäischen Integration, Verlag Barbara Budrich.

Duchrow, Julia/Spieß, Katharina (2005): Flüchtlings- und Asylrecht, 2nd Edition, Deutscher Taschenbuch Verlag.

Gutmann, Rolf (2005): Ausländische Arbeitnehmer, Besondere Regelungen im Arbeits- und Sozialrecht, Bund-Verlag.

Hailbronner, Kay (2005): Kommentar zum Ausländerrecht, Band 1 – 3, Verlag C.F. Müller.

Hailbronner, Kay/Jochum, Georg (2005): Europarecht I Grundlagen und Organe, Verlag W. Kohlhammer.

Heitmeyer, Wilhelm (2005): Deutsche Zustände, Folge 3, Suhrkamp Verlag.

Keskin, Hakki (2005): Deutschland als neue Heimat: Eine Bilanz der Integrationspolitik, VS Verlag für Sozialwissenschaften.

Kissrow, Winfried/Maaßen, Hans-Georg (2005), Ausländerrecht mit den Vorschriften des neuen Zuwanderungsgesetzes, 17th Edition, Verlag W. Kohlhammer.

Marx, Reinhard (2005): Kommentar zum Asylverfahrensgesetz, 6th Edition, Luchterhand Verlag.

Marx, Reinhard (2005): Kommentar zum Ausländer- und Asylrecht, 2nd Edition, Deutscher Anwalt Verlag.

Oppermann, Thomas (2005): Europarecht, 3rd Edition, Verlag C.H. Beck,

Storr, Christian/Albrecht, Rainer (2005): Das neue Zuwanderungsrecht, Textausgabe mit Einführung, Übergangsregelungen und allen Verordnungen, 2nd Edition, Boorberg Verlag.

Weiss, Karin/Thränhardt, Dietrich (2005): SelbstHilfe – Wie Migrant*innen Netzwerke knüpfen und soziales Kapital schaffen, Lambertus Verlag.

Wunderlich, Tanja (2005): Die neuen Deutschen. Subjektive Dimensionen des Einbürgerungsprozesses, Lucius & Lucius Verlag.